The Comptroller General
of the United States

Washington, D.C. 20548

Gary

Decision

Matter of: Head Inc.--Reconsideration

File: B-233066.2

Date: May 16, 1989

DIGEST

Request for reconsideration of decision holding that contracting agency properly accepted low bid that failed to acknowledge a solicitation amendment that had only a minimal impact on cost or merely clarified requirements already contained in the solicitation is denied where protester reiterates prior arguments, but does not establish error of fact or law.

DECISION

Head Inc. requests reconsideration of our decision in Head Inc., B-233066, Jan. 25, 1989, 68 Comp. Gen. ___, 89-1 CPD ¶ 82. In that decision, we denied Head's protest of an award of a contract to Lobar, Inc., for construction work on two warehouse buildings at the Navy Ship Parts Control Center in Mechanicsburg, Pennsylvania, under Navy invitation for bids (IFB) No. N62472-87-B-0094. Head asserted in its protest that Lobar's low bid should have been rejected as nonresponsive because it failed to acknowledge an amendment to the IFB until after bids had been opened. We denied the protest on the ground that the amendment made no material changes to the IFB, and that Lobar's failure to acknowledge the amendment therefore was properly waived as a minor informality. Head requests reconsideration based on alleged legal and factual errors in our decision with respect to three of the amendment's provisions.

We deny the request.

Sprinkler System

The amendment modified the sprinkler system for the exterior loading dock areas. Instead of a system in which water from the interior of the building would be conducted to the exterior by pipes that penetrated the sidewall of the

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building at numerous points, as specified in the IFB, the amendment provided for a system in which water would be carried from the interior by a single pipe to multiple overhead sprinklers located in the canopy above the loading dock; essentially, the amendment changed the system from a sidewall to an overhead type for the loading dock area. Head asserted in its protest that this constituted a material change in the work to be performed and resulted in an increased cost of approximately $44,000.

We found that the changes, viewed in the context of the solicitation as a whole, were not material. The IFB was for a comprehensive construction contract for the repair of the warehouse roofs; the sprinkler system made up only 4 percent of the project; and only 6 percent of the space protected by the sprinkler system was affected by the portion of the sprinkler system changed. Stating that both the IFB and the amendment provided for a dry system, the standard type in exterior areas subject to freezing, we noted that the record indicated the overhead system requested by the amendment was much more common than the original sidewall design for loading docks of the size in question, and generally was easier and more economical to install; the Navy and Lobar estimated that the changes to the sprinkler system entailed a net cost increase of only about $1,000 (due largely to different hardware requirements). Finally, we observed that, even if Head's estimate of the cost impact of the amendment were correct, it was de minimis in the context of the contract as a whole ($4.7 million) and the disparity in the two firms' bid prices ($543,576).

In its request for reconsideration, Head takes issue with our characterization of the sprinkler system called for by the original IFB as a dry system, pointing out that only the amendment required a dry system. Head also challenges our conclusion that an increased cost of more than $44,000 would be de minimis in the context of this contract.

Under our Bid Protest Regulations, a request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification of a decision is deemed warranted and must specify any errors of law made in the decision or information not previously considered. 4 C.F.R. § 21.12(a) (1988). Information not previously considered refers to information that was overlooked by our Office or information to which the protester did not have access when the initial protest was pending. Mere disagreement with our prior decision provides

no basis for reversing the decision. See TCA Reservations, Inc.--Reconsideration, B-218615.2, Oct. 8, 1985, 85-2 CPD ¶ 389.

Head is correct that we inadvertently mischaracterized the original IFB as requiring a dry system; the amendment changed the loading dock requirement from wet to dry. However, this distinction has no bearing on our finding that the amendment had only a minor impact on the sprinkler system and the contract as a whole, and basically substituted the more commonly used overhead configuration for the original IFB's sidewall configuration.

As for Head's assertion that a cost impact as large as $44,000 cannot be de minimis, the case law is clear that a determination of what constitutes a de minimis increase in cost resulting from an amendment is properly based on the magnitude of the cost relative to the overall cost of the contract and the disparity in bid prices. See e.g., Star Brite Constr. Co., Inc., B-228522, Jan. 11, 1988, 88-1 CPD ¶ 17. In any case, our decision neither accepted nor rejected Head's estimate of increased costs in light of the persuasive conflicting evidence placed in the record by the Navy and the awardee that the actual cost was only about $1,000; rather, as explained above, our decision turned on our view of the magnitude of the changes, based on the record. Reconsideration on this basis therefore is not warranted.

Camber

Head initially asserted that a sketch included with the amendment provided for the first time specific ordinates for the amount of required curvature (camber) at designated points along each of the steel beams used to support the warehouse roofs. Head asserted that the sketch thus set forth new and significant specifications, and that the beams must be custom fabricated to meet the new requirements at an additional cost of about $57,000. We found, however, that the camber ordinates shown on the sketch merely provided more specific guidance to the contractor in erecting the beams; in the absence of the sketch, the contractor would have had to formulate its own camber ordinates in any event. We found, based on the record, that the specified camber ordinates were within normal mill tolerances of natural cambering and therefore required no special fabrication or additional cost. We concluded that the camber ordinates were a mere clarification of the existing requirement to erect the roof support beams in an acceptable manner.

In its request for reconsideration, Head concedes that the camber ordinates are within standard mill tolerances, but reiterates its prior argument that the ordinates represent not tolerances but exact curvature requirements that can be satisfied only through costly custom fabrication. We considered this argument at length previously, and we rejected it for the reasons set forth above. Head has presented no new information that would warrant reconsideration of the matter; mere disagreement with our prior decision provides no basis for the modification or reversal of the decision. TCA Reservations, Inc.--Reconsideration, B-218615.2, supra.

Record Retention

Head initially objected to a provision in the amendment that increased from 30 years to 50 years the period of time the contractor was required to maintain medical records of employees exposed to asbestos during the removal of existing duct work. According to the protester, any modification that required a contractor to do anything for an additional 20 years had to be considered material. We found Head's position to be without merit. Medical record retention, we noted, was a minuscule part of the overall scope of the work, and the precise period of time involved (particularly given that the life expectancy of the contractor's business itself was an unknown quantity), was a matter too speculative to characterize as material in the context of this contract. Further, we observed that, even if the arrangements required to be in place to satisfy the original 30-year retention period would have entailed a significant or costly effort on the contractor's part, merely extending those arrangements for an additional period did not constitute such a significant change, in terms of increased cost or obligation, that the failure to acknowledge the change rendered a bidder ineligible for award.

Head reiterates its argument that the 20-year extension intrinsically was a material change, and disputes our statement that the life expectancy of a firm such as Head, which has been performing government contracts for 60 years, is an unknown quantity. However, the firm fails to present new information concerning these matters, such as specific estimates of the increased cost of longer medical record retention. Consequently, we find that Head has presented no new information that would indicate that our prior conclusion was mistaken.

Since Head has failed to demonstrate that our prior decision was based on errors of fact or law, 4 C.F.R. § 21.12(a), the request for reconsideration is denied.

for Seymour Efros

James F. Hinchman
General Counsel